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Supreme Court of the United States

OCTOBER TERM, 1931

Nos. 470–469

WILLIAM A. W. STEWART,

Appellant,

against

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

GEORGE L. SHEARER,

Appellant,

against

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

APPEAL FROM UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

BRIEF FOR APPELLANTS

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SUBJECT INDEX

	PAGE
Opinions Below	1
Jurisdiction	2
Statement of Facts	2
Specification of Errors	4
Statutes Involved:	4
Revenue Act of 1924:	
Sec. 218 (a)	4
Sec. 1200 (a)	5
Sec. 1201 (a)	5
(b)	6
Summary of Argument	6
Argument	7
I. The 25% reduction in 1923 income taxes provided for in the Revenue Act of 1924 applied to all taxes on income accruing in 1923 and was not confined to income taxes payable in 1924	7
(a) Partnership income is merely individual income to be returned in every case by individual members on their individual returns.	10
(b) The Revenue Act of 1924 granted a reduction of 25% of the taxes on all 1923 income whenever returned	12
II. The provisions of Sec. 207 (b) and Sec. 1201 (b) of the 1924 Act are not inconsistent	24
III. If Sec. 1201 (b) is inapplicable and we look alone to Sec. 207 (b), the rates applicable to 1923 referred to in that section are the 1921 rates less 25 per cent.	30
IV. The government's contention that taxpayers with 1923-1924 fiscal year partnership income were deprived of the reduction but received a compensating equivalent by a reduction on their 1922 tax is untenable. The statute permits no such deduction	34
V. To refuse the reduction in taxes on 1923 partnership income reported in 1924 returns would violate the Fifth Amendment to the Constitution of the United States	36

PAGE

Appendix 40

Revenue Act of 1924:
Sec. 207 (a) 40
(b) 40
Sec. 218 (a) 41
Sec. 224 41
Sec. 1200 (a) 42
Sec. 1201 (a) 42
(b) 42
(c) 42

Revenue Act of 1921:
Sec. 205 (c) 43

Revenue Act of 1918:
Sec. 206 43

Table of Cases

Barclay & Co. *v.* Edwards, 267 U. S. 442 39
Benziger *v.* U. S., 192 U. S. 38 28
Brushaber *v.* Union Pacific R. R., 240 U. S. 1 39
Charles Colip, Appeal of, 5 B. T. A. 123 16
Gould *v.* Gould, 245 U. S. 151 28
Iowa-Des Moines National Bank *v.* Bennet, 52 Sup. Ct. Sup. 133 31
Maddison *v.* White, Collector, 40 F. (2d) 564 16
Mercantile Bank *v.* New York, 121 U. S. 138 31
Merchants National Bank *v.* Richmond, 256 U. S. 635 31
Shearer *v.* Commissioner, 48 F. (2d) 522 27
U. S. *v.* Daniels, 219 Fed. 844 29
U. S. *v.* Jackson, 143 Fed. 783 29
U. S. *v.* Phellis, 257 U. S. 156 28
White, Collector, *v.* Maddison, 45 F. (2d) 335 8, 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

WILLIAM A. W. STEWART, *Petitioner,* *against* COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	No. 470
GEORGE L. SHEARER, *Petitioner,* *against* COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	No. 469

PETITIONERS' BRIEF

Opinions Below

Stewart *v.* Commissioner, Board of Tax Appeals: 18 B. T. A. 393;

Stewart *v.* Commissioner, United States Circuit Court of Appeals for the Second Circuit: 52 F. (2d) 17.

Jurisdiction

These appeals are taken from judgments of the United States Circuit Court of Appeals for the Second Circuit, filed July 24, 1931 (R-29), which judgments affirmed orders of the United States Board of Tax Appeals entered November 30, 1929 (R-11), which denied claims for overpayment of taxes on income accruing in 1923 of $7,435.71 in the case of William A. W. Stewart, and $8,488.18 in the case of George L. Shearer (R-12). Petitions were duly presented to this Court by the said William A. W. Stewart and George L. Shearer for writs of certiorari, and orders allowing the same were filed herein on November 30, 1931 (R-31). The applications for certiorari were made within three months after the filing of the judgments in the Circuit Court of Appeals as provided by Section 350 of the Judicial Code.

Statement of Facts

The Board of Tax Appeals made the following findings of fact (R-10):

> "The petitioners are individuals and residents of New York, with their offices located at 45 Wall Street, New York City. They made and filed their individual income tax returns on the basis of a calendar year.
>
> "The partnership of Stewart & Shearer, whose members are the petitioners herein, made and filed a partnership return of income on the basis of a fiscal year ended April 30, 1924.

"The respondent determined the net income of petitioner Shearer for the calendar year 1924, to be $103,613.53 of which amount $67,462.38 represents that part of the net income of the partnership attributable to the year 1923. He further determined that the tax on the income attributable to 1924 was $3,071.67, and that the tax on the income attributable to 1923 was $27,244.32.

"The respondent determined the net income of petitioner Stewart for the calendar year 1924, to be $91,165.35, of which amount $71,462.39 represents that part of the net income of the partnership attributable to the year 1923. He further determined that the tax on the income attributable to 1924, was $688.43, and that the tax on the income attributable to 1923 was $23,732.92."

Each of the petitioners claimed before the Commissioner the right to receive the 25% reduction of the tax on that portion of the partnership income attributable to the year 1923. These claims were rejected by the Commissioner of Internal Revenue, and on appeal the Board of Tax Appeals sustained the determination of the Commissioner. Petitions were presented in each case to the United States Circuit Court of Appeals for the Second Circuit for review of the decisions of the Board of Tax Appeals, and that Court affirmed the decision of the Board. Petitions for certiorari to review the determinations of the Circuit Court of Appeals were filed in this Court on October 19, 1931, and writs of certiorari were granted by this Court on November 30, 1931.

Specification of Errors

It is intended to urge in each case the following assigned errors (R-15):

1. The Board erred in holding that the twenty-five per cent. reduction in tax provided by Title XII of the Revenue Act of 1924 does not reduce the 1924 tax payable in 1925 of an individual partner whose 1924 income is made up in part of a share of partnership income for a fiscal year beginning in 1923.

2. The Board erred in failing to allow the petitioner a credit of twenty-five per cent. of the tax on that portion of the partnership income shown on his return for 1924 which was attributable to the year 1923.

3. The Board erred in rendering a decision for the respondent.

Statutes Involved

Revenue Act of 1924:

"Sec. 218. (a) Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the part-

nership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership ending within the taxable year upon the basis of which the partner's net income is computed."

Title XII—Reduction of Income Tax Payable in 1924:

"Sec. 1200. (a) Any taxpayer making return, for the calendar year 1923, of the taxes imposed by Parts I and II of Title II of the Revenue Act of 1921 shall be entitled to an allowance by credit or refund of 25 per centum of the amount shown as the tax upon his return.

"Sec. 1201. (a) Any taxpayer making return, for a period beginning in 1922 and ending in 1923, of the taxes imposed by Parts I and II of Title II of the Revenue Act of 1921 shall be entitled to an allowance by credit or refund of 25 per centum of the same proportion of his tax for such period (determined under the law applicable to the calendar year 1923 and at the rates for such year) which the portion of such period falling within the calendar year 1923 is of the entire period.

"(b) Any taxpayer making return, for a period beginning in 1923 and ending in 1924, of the taxes imposed by Parts I and II of Title II of this Act, shall be entitled to an allowance by credit or refund of 25 per centum of the same proportion of a tax for such period (determined under the law applicable

to the calendar year 1923 and at the rates for such year) which the portion of such period falling within the calendar year 1923 is of the entire period."

Other statutes referred to, as well as those above quoted, are printed in the Appendix to this brief.

Summary of Argument

I. The 25% reduction in 1923 income taxes provided for in the Revenue Act of 1924 applied to all taxes on income accruing in 1923 and was not confined to income taxes *payable* in 1924.

(a) Partnership income is merely individual income to be returned in every case by individual members on their individual returns.

(b) The Revenue Act of 1924 granted a reduction of 25% of the taxes on all 1923 income whenever returned.

II. The provisions of Sec. 207(b) and Sec. 1201(b) of the 1924 Act are not inconsistent.

III. If Sec. 1201(b) is inapplicable and we look alone to Sec. 207(b), the rates applicable to 1923 referred to in that section are the 1921 rates less 25 per cent.

IV. The government's contention that taxpayers with 1923-1924 fiscal year partnership income were deprived of the reduction but received a compensating equivalent by a

reduction on their 1922 tax is untenable. The statute permits no such deduction.

V. To refuse the reduction in taxes on 1923 partnership income reported in 1924 returns would violate the Fifth Amendment to the Constitution of the United States.

ARGUMENT

POINT I

The 25% reduction in 1923 income taxes provided for in the Revenue Act of 1924 applied to all taxes on income accruing in 1923 and was not confined to income taxes payable in 1924.

This proposition is decisive of the question here presented. The opinion of the Circuit Court of Appeals in these cases (52 Fed. (2d) p. 17) is founded on the assumption that the 25% reduction was granted only in respect to taxes payable in 1924. If this were so all that would have been necessary to do would have been to provide that all taxes payable in 1924 should be reduced 25%. Instead the Act provides in Sec. 1201(a) for a reduction of a proportion of taxes payable in 1924, on income of 1923 when reported with income of 1922 and in Sec. 1201(b) for a similar reduction in taxes payable in 1925, on 1923 income when reported with 1924 income.

The title giving the reduction (Title XII) is headed "Reduction of Income Tax Payable in 1924" but the provisions of the sections granting the reduction show the title

to be inaccurate, for any income for a period beginning in 1923 and ending in 1924 would be reported in a return to be filed on or before March 15, 1925, as provided in Sec. 218 (a), and Sec. 1201(b) specifically provides for a 25% reduction of the tax on such income, although that tax would be payable in 1925.

Income received from a partnership having a fiscal year different from the calendar year is taxable as of the year to which it is attributable. The Revenue Act of 1924, which reduced the tax on incomes of 1923, assured to every taxpayer paying a tax on income attributable to 1923 a reduction of his tax. To the appellants this reduction has been denied by the court below.

Throughout every Revenue Act, the recognition of the income *accruing* in a calendar year as the subject of taxation, irrespective of the time of receipt by the taxpayer is uniform and emphatic. It is this consideration which led the Circuit Court of Appeals for the First Circuit to render its decision in *White* v. *Maddison* (45 F. (2d) 335) which the Court for the Second Circuit has refused to follow in these cases, basing its reasoning largely on the assumption that the 25% reduction was confined to taxes payable in 1924.

The unbroken policy of our revenue legislation has carefully required and preserved the identification, for tax purposes, of income according to the year to which it was attributable and imposed the rates of tax applicable to such year. In cases where by reason of the taxpayer or his partnership keeping a fiscal year different from the calendar year, the income was attributable to parts of different calendar years, it has been the uniform policy of the succes-

sive revenue acts to preserve the identity of the income attributable to the two calendar years portions of which made up the whole and to charge each portion with the rates for the year to which it was attributable.

In the administration of the successive revenue acts it has long been a familiar occurrence that the fiscal year of a taxpayer, or the fiscal year of his partnership, frequently differed from the calendar year, so that the income actually received by a taxpayer in any particular calendar year was made up in part of income attributable to that year and in part of income attributable to the preceding year. In such cases, not only the revenue act in force when the amendment of 1924 was undertaken, but the older acts as well, have, in pursuance of an unbroken policy, provided that in cases where the taxpayer's fiscal year, or his partnership's fiscal year, differs from the calendar year, the incidence of taxation shall be in accord with the time the income was actually earned rather than with the time it happened to be received by the taxpayer. This principle has long been an integral part of the structure of the income tax laws. When rates of tax have been changed the change has always taken effect at the beginning of a calendar year, and when the taxpayer's fiscal year is identical with the calendar year the change is operative automatically. But when the taxpayer's fiscal year, or his partnership's fiscal year, differs from the calendar year, in making any change of rates the law has always carefully preserved the identity of the income in accordance with the year to which it has been attributable, and the applicable rates of tax have always been the rates applicable to such year.

It was only in the case of partnerships that both calendar and fiscal year income would be included in the same return, so that it was for partners' individual returns that special provision had to be made in regard to fiscal year income when reported with calendar year income, more especially when the tax rates changed because of increases or reductions. In every Revenue Act some provision more or less arbitrary has been made for a method which would accomplish what was regarded as a fair computation of tax on both calendar and fiscal year income.

(*a*)

PARTNERSHIP INCOME IS MERELY INDIVIDUAL INCOME TO BE RETURNED IN EVERY CASE BY INDIVIDUAL MEMBERS ON THEIR INDIVIDUAL RETURNS.

There is no recognition in the income tax Acts of partnership income as itself an independent subject of taxation. Sec. 218(a) of the Act of 1924 says, "Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity."

Returns are required to be made by partnerships by Sec. 224, which is taken from earlier acts, but only for the purpose of giving information as to the partner's share of the profits and Sec. 218(a) requires the individuals to return such income whether or not withdrawn from the partnership—this, of course, to prevent evasion of taxation by allowing profits to accumulate in the firm—but in every

respect partnership income is only the income of the individual partners. Some confusion appears in the opinion below because of Sec. 207(b) which provides for apportioning taxes between years where partnership fiscal year and individual calendar year income are reported together. This section, however, does not create a separate entity of partnership income; it merely provides, where fiscal and calendar year incomes are reported together, for apportioning the former between the calendar years to which its component parts are attributable and imposing on each component a tax at the rates applicable to that calendar year. The section might just as well have read, "Where income for a fiscal year is reported with calendar year income in the same return" instead of "If a fiscal year of a partnership begins in one calendar year and ends in another calendar year."

An individual's income received from a partnership remains individual income—it may be for a fiscal year differing from a calendar year—and a partner may have, and usually has, other income reported for a calendar year, but the income from the partnership remains nevertheless nothing but the partner's individual income for the tax on which he is liable *only in his individual capacity.*

The Court may take judicial notice that many partnerships are formed each year after January 1st and in every case having a fiscal year where a partnership was formed in 1923 after that date the interpretation placed on the statute by the court below would deprive all partners in those firms of the 25% reduction on their 1923 partnership income.

Some such cases are pending in the courts, but just how many cannot be ascertained. Among them are *Westfeldt* v. *Commissioner of Internal Revenue* in the Circuit Court of Appeals for the Fifth Circuit, *Shannon and Fuchs* v. *Commissioner of Internal Revenue* in the Circuit Court of Appeals for the District of Columbia and *Rogers* v. *Anderson* and *Woody* v. *Bowers* in the District Court for the Southern District of New York. How many individuals have borne this injustice without protest is unknown, but the fact, if true, that all had submitted without complaint, would not tend to prove that such an unfair construction was correct.

(*b*)

THE REVENUE ACT OF 1924 GRANTED A REDUCTION OF 25% OF THE TAXES ON ALL 1923 INCOME WHENEVER RETURNED.

The relevant sections of the 1924 Act which gave to taxpayers the 25% reduction in taxes on 1923 income read as follows:

"TITLE XII. REDUCTION OF INCOME TAX PAYABLE IN 1924.

"Sec. 1200(a) Any taxpayer making return, for the calendar year 1923, of the taxes imposed by Parts I and II of Title II of the Revenue Act of 1921 shall be entitled to an allowance by credit or refund of 25 per centum of the amount shown as the tax upon his return.

"Sec. 1201(a) Any taxpayer making return, for a period beginning in 1922 and ending in 1923,

of the taxes imposed by Parts I and II of Title II of the Revenue Act of 1921, shall be entitled to an allowance by credit or refund of 25 per centum of the same proportion of his tax for such period (determined under the law applicable to the calendar year 1923 and at the rates for such year) which the portion of such period falling within the calendar year 1923 is of the entire period.

"(b) Any taxpayer making return, for a period beginning in 1923 and ending in 1924, of the taxes imposed by Parts I and II of Title II of this Act, shall be entitled to an allowance by credit or refund of 25 per centum of the same proportion of a tax for such period (determined under the law applicable to the calendar year 1923, and at the rates for such year) which the portion of such period falling within the calendar year 1923 is of the entire period."

In providing for this 25% reduction, three situations were considered:

First, where returns had been filed March 15, 1924, showing income only for the calendar year 1923. These were the simplest cases, and Section 1200(a) provided for a flat 25% reduction of the tax shown upon those returns.

Second, where returns filed March 15, 1924, included income accruing both in 1922 and 1923, because of the use of a fiscal year commencing in 1922, and ending in 1923. Those cases were provided for in Section 1201(a) which gave taxpayers a reduction of 25% of the tax on the income, shown by those returns, which accrued in 1923.

Third, where returns which were to be filed March 15, 1925, should include income accruing both in 1923 and 1924, because of the use of a fiscal year beginning in 1923, and

ending in 1924. In those cases Section 1201(b) gave taxpayers a reduction of 25% of the tax on the income, shown by those returns, which accrued in 1923.

If these petitioners had used the same fiscal year for their individual income as was used by the firm and had made a return in 1925, on the same fiscal year basis as the partnership, they would have returned individual and partnership income for eight months of 1923 and four months of 1924, and would have been entitled, under the explicit language of Section 1201(b), to a 25% reduction of the tax, at 1923 rates, on the income for that year. The mere fact that in their individual return on a calendar year basis they were required to show their partnership income on a fiscal year basis under the provisions of Section 218(a), does not alter the situation. The petioners' returns were on a calendar year basis as to individual income and on a fiscal year basis to to partnership income, and Section 1201(b), by express terms, gives them a 25% reduction of tax on the 1923 income shown on the fiscal year basis. It is not necessary to read any words into these sections granting the reduction. It is only necessary to keep in mind the actual facts. The law itself provides that "individuals carrying on business in partnership shall be liable for income tax only in their individual capacity" (Sec. 218a). What the petitioners did was to make a combined return including partnership income on a fiscal year basis and individual income on a calendar year basis. So far as the individual income was concerned, no case was presented for reduction in tax, for that income all accrued in 1924, but so far as partnership income was con-

cerned, two-thirds accrued in 1923, and one-third accrued in 1924. Because of the express statutory requirement that this partnership income should be reported in this way in returns of income received in 1924, the petitioners had no choice. The returns themselves clearly showed the facts. The 1924 income tax Form 1040 contained separate columns for income taxable at 1923 rates and for income taxable at 1924 rates, clearly recognizing that it was necessary to separate the income accruing in the different years because of this tax reduction on 1923 income. The law's requirement that such returns must combine in a single year both calendar year individual income and fiscal year partnership income does not alter, but on the contrary emphasizes, the two-fold nature of the subject matter of those returns. They were, in fact, two returns consolidated,—one of individual income for the calendar year and the other of partnership income for the fiscal year, and so far as the partnership income for the fiscal year was concerned, Section 1201(b) gave the taxpayers the absolute right, by its express language, to a 25% reduction of the tax on 1923 income.

The Commissioner determined that the tax, at rates fixed by the 1921 Act on the petitioner Stewart's 1923 partnership income was $23,732.92 and on the petitioner Shearer's 1923 partnership income was $27,244.32, but he refused to allow the taxpayers the 25% reduction in the tax on 1923 income.

This precise question has been determined in the case of *White, Collector of Internal Revenue* v. *Maddison* (45 F. 2d, 335) where the United States Circuit Court of Appeals

for the First Circuit, on a state of facts identical with those in the cases at bar, ruled that the taxpayer was entitled to the same reduction in tax as is here claimed.

In that case the taxpayer reported for 1924 $99,000 representing his share of partnership profits for the fiscal year beginning October 1, 1923, and ending September 30, 1924, and at the same time reported his individual income for the calendar year 1924. The taxpayer's return included, therefore, three-twelfths of his partnership profits which accrued in the year 1923. The Commissioner refused to allow him a 25% reduction in the tax on this three-twelfths of the partnership profits and he brought an action, against the Collector, in the United States District Court for the District of Massachusetts. Judge LOWELL decided that he was entitled to the reduction claimed, in an opinion reported *sub. nom. Maddison* v. *White, Collector of Internal Revenue* (40 F. 2d. 564). The Collector appealed, and the Circuit Court of Appeals for the First Circuit affirmed the decision below. The reasoning of the Circuit Court of Appeals in its opinion, while differing somewhat from the argument stated above, was essentially the same, the Court holding that the reference to income in Sections 1200 and 1201 of the Act of 1924 referred to "income accruing in" the calendar year 1923. The conclusion was necessarily in favor of the taxpayer.

The Board of Tax Appeals in *Appeal of Charles Colip* (5 B. T. A., p. 123) decided against the taxpayer on a precisely similar state of facts, and the Board has followed that decision in other cases, to which it is not necessary to refer. A reading of the opinion of Mr. Sternhagen will show that no reference whatever is made to Sections 1201

(a) and (b) of the 1924 Act, which are the Sections specifically covering that case before the Board. The entire reasoning in the opinion is based upon the language of Section 1200(a), which was misconstrued in the opinion, for that section merely provides for a reduction of 25% of the amount shown as the tax upon a return for the calendar year 1923. It does not cover a case where a return, as in the cases here and in the *Maddison* and *Colip* cases, was partly for the calendar year 1923 and partly for a fiscal year including a portion of the calendar year 1923. A reduction in taxes on 1923 income shown by such returns is specifically provided for in Section 1201(b).

If separate returns of the taxpayers, one showing partnership income on a fiscal year basis and the other showing individual income on a calendar year basis, could have been filed, with a consolidated statement showing the computation of the tax on the combined income shown by the separate returns, there would have been no possible question of the right of the taxpayers to a reduction of the tax on partnership income accruing in 1923, which is expressly provided for in Section 1201(b). It is submitted that the filing of a single return showing clearly the income accruing in the different years cannot affect the taxpayers' right to the reduction.

The Circuit Court of Appeals denied relief because, as it says (R-25), "Section 1201(b) applies to a taxpayer making a return for a period beginning in 1923 and ending in 1924." "The appellants," it is said, "were not making a return for such a calendar period, but for the calendar year 1924." "By its terms Section 1201(b)," the court continues, "relates only to taxpayers reporting

income for a fiscal year different from a calendar year—*a situation not involved here*" (italics quoted). But is not that precisely the situation involved here? Manifestly each appellant's return was not for the same period as the calendar year. In each case it was a composite return, a form of return required by law. As to his ordinary income it was a return for a period identical with the calendar year. As to his partnership income it was "for a fiscal year different from the calendar year." On the face of the return it was not as a whole one for a period identical with the calendar year, for it included income attributable to a period falling partly within and partly without the calendar year. The taxpayer was in the most exact and literal sense "reporting income for a fiscal year different from a calendar year." How could the fact that he was a partner expunge this characteristic from his return? The law does not say "a taxpayer *other than a partner* reporting income for a fiscal year different from the calendar year." To uphold its ruling the court below was accordingly forced to read into the act some such words of limitation, and indeed in the very next sentence it does precisely this, for it says "Section 1201(a) (a section in structure and kind of subject matter identical with 1201(b), referring to a fiscal year 1922-3, just as Section 1201(b) refers to a fiscal year 1923-4) covers only cases where a taxpayer, *not a partner*, is reporting income," etc. On what principle of interpretation is a tax reduction, one clearly intended to be granted to all taxpayers having income attributable to broken fiscal years, denied in the case of a taxpayer where the only reason for the discrimination is that in his case the broken fis-

cal year is due to the fact that he is a partner? The broken fiscal year, the difference in the tax liability established for the two years, these are the essential elements for the application of Section 1201(b). Its application is not to be defeated by the arbitrary exclusion from its benefit of the taxpayer who happens to be a partner or because his return also includes calendar year income whose tax rate is independently provided for.

The underlying error in the reasoning of the court below is in treating Sec. 1201(b) as though it were part of a formula for making out a return. That section, the court says, (R-25) "is not applicable to a case where partnership income, and not the tax, is allocated between separate years as provided in the case of partnership of Sec. 207(b)."

On what theory does the fact that in the return the partnership income has been allocated between separate years take the case without the section defining the amount of the credit or refund? What brings it within the credit section and entitles the taxpayer to his reduction is that his return included income attributable to 1923. If there were nothing in the return but fiscal year income the return would follow the formula of Sec. 207(a); if it were a partner's return and also included individual calendar year income it would follow the formula of Sec. 207(b). The two formulae differ in that in carrying through the respective percentages of the first year and second year components of the fiscal year, one formula divides *the tax* into the same percentages or fractions, and the other formula divides the *income* and then computes the tax on each fraction. But whether the return calls for one formula or the other, it is

in each case a return showing income for a fiscal year beginning in 1923 and ending in 1924. It is the fact that he has made such a return, and has paid, or is liable to pay, a tax based thereon, that brings the taxpayer at once within the section. It brings him within it wholly irrespective of what kind of formula has been used in his return to compute the tax, or of whether in so doing he has separated the tax itself into two parts or separated the income and then computed the tax on each part. That is a mere detail in the computation of the tax; it has nothing to do with the right to the refund.

The nature of the return, its inclusion of 1923-24 fiscal year income, is thus the sole criterion in determining whether or not the taxpayer comes within the protection of the section. The section (1201-b) has to do only with defining the amount of the "*allowance by credit or refund*" to which such a taxpayer is entitled. It does not attempt to prescribe the method by which his tax itself shall be computed, nor does it limit the "credit or refund" to taxes that had been computed in any particular way. That is fully provided for elsewhere; if there be nothing but fiscal year income, Sec. 207(a) is used; if it be a partner's return including individual calendar year income, Sec. 207(b) is used. In either case the taxpayer is within the case defined in Sec. 1201(b) and entitled to his 25 per cent "credit or refund."

When it comes to determining the *amount* of the credit or refund, there is but one detail for which the return need be examined, and that detail is ascertained on mere inspection, and equally so whether the return be one made under

Sec. 207(a) or 207(b). The only thing to be ascertained from the return is the amount of income received during the fiscal year. That information furnished, there is no further use for the return and it may be disregarded.

The amount of the "tax for such period," that is, "a period beginning in 1923 and ending in 1924," is "determined under the law applicable to the calendar year 1923 and at the rates for such year." Its determination is a matter of mere arithmetical computation. This hypothetical tax determined, the next step is to fix a certain proportion of such hypothetical tax, and that proportion is defined as being the same proportion of such tax which the portion of the fiscal year falling within the calendar year 1923 is of the entire fiscal year.

Thus we arrive at a portion of a hypothetical tax for the 1923 fiscal year, an amount determined, not as the identification of any specific part of a tax paid or charged, but simply as a necessary step in a convenient method of arriving at a fair and equitable "allowance by credit or refund." Of this portion thus ascertained of a hypothetical tax we take twenty-five per cent, and it is this twenty-five per cent, an amount frankly artificial and arrived at by a purely arithmetical process, which the law takes as the allowance which the taxpayer may have "by credit or refund." That it is a fair approximation to precision is illustrated by the fact that in the present cases the amount thus reached varies but negligibly from what the credit would be if worked out by reconstructing the partners' returns according to the formula of Sec. 207(b); in Mr. Stewart's case, involving a tax of $23,732.92, the variation is less than $200; in Mr.

Shearer's case, involving a tax of $27,244.32, the variation is but a trifle over $300.

Section 1201(b) does not establish a formula for making a return, nor for computing the entire tax. Its office is quite different; to define and measure the "allowance by credit or refund" to be given every taxpayer whose return, whether made under Sec. 207(a) or 207(b), shows fiscal year income attributable partly to 1923 and partly to 1924. The error of the court below was in regarding Sec. 1201(b) as establishing a formula for making a return, wherein must be found the particular item for which the credit was to be allowed. The amount of the allowance is indeed mathematically determined from data obtained from the return, but the only necessary use of the return itself is to furnish that data, namely the amount of the fiscal year income. All the rest of the return may be disregarded; the particular formula used therein for computing the tax is wholly irrelevant.

In short, the legislative direction embodied in Sec. 1201(a) was as follows:

1. Did this taxpayer make a return showing income for a fiscal year beginning in 1923 and ending in 1924? If he did, he is entitled to an allowance by credit or refund. The amount of such allowance is determined as follows:

2. Ascertain from his return the amount of his income for the whole fiscal year beginning in 1923 and ending in 1924.

3. Compute the hypothetical tax on such income at the old 1923 rates, that is, the rates fixed by the Act of 1921.

4. Fix the portion of such hypothetical tax which is the same fraction of the tax that the portion of the fiscal year falling within 1923 is of the whole fiscal year.

5. Take twenty-five per cent of such portion.

6. Allow the taxpayer, by credit or refund, such twenty-five per cent.

Plainly, the taxpayer may take such allowance as a "credit" on the tax shown by his return filed in 1924, or if he does not take it then he may apply for it as a "refund." Section 1201(b) simply determines the amount of the allowance. The very fact that the allowance is made available as a refund shows that its determination need not parallel the structure of the return. Sec. 907(b) prescribes, in the case of a fiscal year partner, the formula for the return; Sec. 1201(b) prescribes the formula for computing the "allowance by credit or refund." The court below fell into the error of trying to find in the return some particular item which should be identical with the "allowance" directed by Sec. 1201(b), whereas the latter section has no necessary connection with the form of the return and searches only for the actual fiscal year income, which when found affords the only data required for computing the credit.

POINT II

The provisions of Section 207(b) and Section 1201(b) of the 1924 Act are not inconsistent.

As we have already pointed out, although the sole office of Sec. 1201(b) is to declare the taxpayer's right, in certain cases, to a credit or refund and to specify how its amount is to be determined, the Circuit Court of Appeals fell into the error of reading this section as though its office were to state the formula for computing the tax itself. Then on comparing this section with Sections 207(a) and 207(b), which are sections prescribing the formulae for computing the tax in two specified kinds of cases, the court observed that Sec. 1201(b) made use of one item which was employed in the formula of Sec. 207(a) for computing the tax, but was not employed in the formula of Sec. 207(b). Therefore, said the court, Sec. 1201(b) is not applicable to a case where the return was made as prescribed in Sec. 207(b). And as a partner in a firm with a fiscal year beginning in 1923 and ending in 1924, the partner also having individual income, was obliged to make his return as prescribed by Sec. 207(b), the court held that the statutory provision for allowance by credit or refund did not apply to a person making that form of return, and the petitioners were dismissed without relief.

But there is no inconsistency between Sec. 207(b) and Sec. 1201(b). One specifies how the tax is to be computed in the first instance; the other how the amount of the 25% allowance by credit or refund is to be determined. A statu-

tory provision for a refund is not obliged to reconstruct the formula for computing the tax in the first place. Suppose, for example, that Congress should for some reason desire to make some provision for partial refund of taxes paid on profits on sales of capital assets. Might it not, if it chose, provide that taxpayers whose returns during any of the preceding three years had shown such profits should be entitled "to an allowance, by credit or refund," of ten per cent of the tax on an amount equal to their three-year average of such gains, determined by the lowest rates applicable in any of those years? Here would be a formula for computing the credit or refund having no relation to the formula that had been used each year in computing the tax. But there would be no inconsistency between them. Their functions would simply be different.

So here, assuming for argument that for any reason Sec. 1201(b) is not applicable and is out of the picture, then the inquiry would be whether, without the specific provision of Sec. 1201(b) for a 25% credit, Sec. 207(b) did not itself, *in the absence of any other provision for a credit,* require an allowance of 25% of the 1923 tax. Admittedly they would not both be applicable, and even if the language of the earlier section, 207(a), might standing by itself be broad enough to provide for such a case, this would in any event be only incidental to the broader object of the section; and under familiar principles of construction it would be the later and more specific section, 1201(b), performing the particular function of prescribing how the amount of the allowance was to be determined,—it would be the later and specific section that would govern. It would not be a case of inconsistency between two sections equally applicable.

But we are assuming that Sec. 1201(b) is regarded as having no application. In such case there could of course be no inconsistency.

The Circuit Court of Appeals regarded the discrepancy between the rules for computation in these two sections as fatal to the taxpayers' contention in these cases, but even if there were doubt as to which should be applied in computing the tax reduction, there is only a small difference in the results produced by the two rules. The Circuit Court of Appeals apparently assumed that this difference was substantial, but the computation shows that the difference in tax under the rule in Section 1201(b) and the rule in Section 207(b) is less than $200 in the case of Mr. Stewart and slightly over $300 in the case of Mr. Shearer. Both rules are artificial, the purpose being to reach an approximation that would be substantially correct. Section 207(b) regards income received in one year as being income of a previous year, for its last sentence provides for placing the part of the income attributable to the earlier year in the higher brackets, using the income for the later year as if it were income of the earlier year for the purpose of ascertaining the higher bracket that applies. The method provided for in Section 1201(b) is simpler and provides for merely using proportions based upon the parts of the earlier and later years which are included in the fiscal year in question. The two methods produce results so nearly alike that the difference should not deprive a taxpayer of a reduction which it is the clear intent of the statute to grant.

However, an examination of the 1921 Act, which was in effect until January 1, 1924, and consequently applied to

the year 1923, shows that that Act contained no provisions similar to the last sentence of Section 207(b) of the Act of 1924. There had been a provision in the Revenue Act of 1918 providing for placing income of earlier years in higher brackets (Section 206) but this Section was repealed by the Act of 1921,* and the only provision in that Act in regard to fiscal years of partnerships is found in Section 205(c), which provides for broken partnership income beginning in 1920 and ending in 1921, or beginning in 1921 and ending in 1922, saying nothing about such income beginning in 1922 and ending in 1923.

Shearer *v.* Commissioner, 48 F. (2d) 522.

As the Revenue Act of 1924 in this respect affected only income for the year 1924 and later years, its new rates had no application to income for the year 1923, the tax on that income being provided for only by the Sections which granted a flat reduction of 25% on that portion of the tax imposed on income of 1923. Moreover, the rule stated in Section 1201(b) is substantially identical with the rule stated in Section 205(c) of the Act of 1918, so that it is natural to suppose that the legislative intention was to use for 1923 income a rule subsantially like the rule stated in the 1921 Act, rather than the method provided in the 1924 Act for computing tax on income accruing after January 1, 1924.

Even if there were a doubt as to which rule should apply, the fact that Section 1201(b) is a later section of the

* The repeal by omission was by inadvertence: Ways and Means Committee Report of February 11, 1924, on Revenue Bill of 1924 (H. R. 6715), page 19; Senate Finance Committee Report, page 21.

Act applying only to particular cases, while the earlier Section 207(b) applies generally to all income accruing after January 1, 1924, indicates a legislative intent that the later section should govern the particular cases involved. This situation is one in which the familiar rule applies that doubt in a taxable statute should be resolved in favor of the taxpayer.

> Gould *v.* Gould, 245 U. S. 151;
> Benziger *v.* United States, 192 U. S. 38.

The manifest purpose of Title XII of the Revenue Act of 1924 was to give every taxpayer a reduction of 25% of the tax on his income attributable to the year 1923 wherever that income was reported and whenever that income was returned. The question should not be befogged by discussion of real or supposed discrepancies in the form of the various sections of the Act involved—all such matters must yield to those of substance, and the real legislative intent should be carried out.

This Court has said:

> "We recognize the importance of regarding matters of substance and disregarding forms in applying the provisions of the Sixteenth Amendment and income tax laws enacted thereunder."
> U. S. *v.* Phellis, 257 U. S. 156, 168.

Sec. 1201(b), being the section specifically devoted to the case of a taxpayer whose return showed income attributable to the years 1923 and 1924, controls.

> "As was said by Justice BREWER, in *Long* v. *Culp*, 14 Kan. 412, 414:

"'It is also a rule of construction that, when one section of a statute treats specially and solely of a matter, that section prevails in reference to that matter over other sections in which only incidental reference is made thereto. Not because one section has more force as a legislative enactment than another, but because the legislative mind having been, in the one section, directed to this matter, must be presumed to have there expressed its intention thereon rather than in other sections where its attention was turned to other things.' Wellsburg *v.* Panhandle T. Co. (W. Va.), 48 S. E. 746, 751."

U. S. *v.* Jackson, 143 Fed. 783, 787 (Cir. Ct. of App., 9th Cir.).

"In the consideration of irreconcilable conflicting provisions, if both were enacted at the same time, the last in order or arrangement controls. Hall *v.* Equator M. & S. Co., Fed. Cas. No. 5931; *In re* Richards, 96 Fed. 935, 939, 37 C. C. A. 634; *In re* Tune (D. C.), 115 Fed. 906, 911; United States *v.* Jackson, 143 Fed. 783, 75 C. C. A. 41; Howard *v.* Bangor & A. R. Co., 86 Me. 387, 29 Atl. 1101; State *v.* Public Service Commission, 101 Wash. 601, 172 Pac. 890."

U. S. *v.* Daniels, 219 Fed. 844, 849 (Cir. Ct. of App., 2d Cir.).

POINT III

If Section 1201(b) is inapplicable and we look alone to Section 207(b), the rates applicable to 1923 referred to in that section are the 1921 rates less 25 per cent.

Assuming that the petitioners do not come within the terms of Sec. 1201(b), this would mean that for this particular kind of taxpayer who had paid, or was charged with, a tax on his 1923 income, no specific allowance by credit or refund had been declared. The question would then arise whether the tax imposed on him was itself fixed at a rate that in effect gave him the benefit of the 25% allowance. The presumption would be that it was so fixed, because otherwise the partner taxpayer would be left the victim of an unaccountable discrimination.

Sec. 207(b) provides that the partner whose fiscal year is different from the calendar year shall separate his partnership income into two parts in the same respective proportions as the part of the fiscal year falling within the first calendar and the part falling within the second. The tax on the first year portion (in this case the 1923 part of the fiscal year) is then computed at the rates for the calendar year 1923 "determined under the law applicable to such calendar year."

What were "the rates for the calendar year (1923) * * * determined under the law applicable to such calendar year?" Sec. 1200(a) of the Act of 1924 applied to the year 1923 rates determined as follows:

> "Any taxpayer making return, for the calendar year 1923, of the taxes imposed by Parts I and II of Title II of the Revenue Act of 1921 shall be entitled to an allowance by credit or refund of 25 per centum of the amount shown as the tax upon his return."

The "law applicable" to 1923 was the law which in Section 1200(a) above quoted made the 1923 rates 25 per cent. less than those under the act of 1921. What other law was applicable to 1923? Every section in the act of 1924 that provided for a computation of the tax on income of 1923, whether Section 1200(a) referring to the ordinary return, Section 1201(a) referring to a return of income attributable partly to 1922 and partly to 1923, or Section 1201(b) referring to income attributable partly to 1923 and partly to 1924, declared that the tax should be a sum 25 per cent. less than the tax at the old 1921 rates; in other words, the law fixed and determined the 1923 rates at a sum equal to 75 per cent. of the old rates. What other law was "applicable thereto"?

This Court has, in effect, said that the rate of tax is the net tax burden, for in interpreting the statute permitting states to tax national bank shares provided the taxation was not "at a greater rate than is assessed upon other monied capital," this Court has considered numerous state statutes imposing taxes upon banks and has declared them void for the reason that the tax burden imposed upon the national banks was greater than that imposed upon other monied capital.

Mercantile Bank *v.* New York, 121 U. S. 138;
Merchants National Bank *v.* Richmond, 256 U. S. 635;
Iowa-Des Moines Nat. Bank *v.* Bennet, 52 Sup. Ct. Rep. 133. (Decided Dec. 14, 1931.)

The reduction of 25% in the tax on 1923 income was accomplished by Title XII of the Revenue Act of 1924, which consisted of Sections 1200 to 1206 providing for a flat reduction of 25% of the tax on 1923 income calculated under the provisions of the Act of 1921.

As is well known, this reduction was granted for the reason that the Revenue Act of 1924 did not become a law until June of that year, after 1923 returns had been filed and the first quarter of the tax shown by those returns had been paid. It was therefore impossible to make the new rates of 1924 apply to 1923 income, and to accomplish the real purpose of the Act of 1924, which was to reduce taxation for 1923 and subsequent years, the only practical way in respect to 1923 income was to give taxpayers a benefit approximately equal to the reduction in rates applicable to the tax on income of subsequent years. The new Act reduced the rates of taxation approximately 25% as compared with the old Act, and consequently the situation was met by Title XII of the Act of 1924, providing for such a flat 25% reduction. In other words, this Title XII lowered the actual tax burden for the year 1923 by 25 per cent. It is now claimed by the Internal Revenue Department that although a permanent reduction in taxes was intended, including the tax on incomes of 1923, Congress deliberately singled out individuals with fiscal year partnership income and refused them the benefit of the reduction of tax on 1923 income while it granted that reduction to all other taxpayers.

That Congress had no such discrimination in mind, but had as one of the major objects of the law an immediate

lightening of the tax burden of all persons paying taxes in respect to 1923 income, is evident from the stressing of this feature by the committee in charge. In presenting the bill in the House on February 14, 1924, Mr. Green, Chairman of the Ways and Means Committee, said:

> "There are many changes in the existing law. The first and perhaps one of the most important is the provision in relation to the taxes which are to be paid this year. The bill provides that on the taxes for the year 1923, to be paid during this calendar year of 1924, there shall be a reduction of 25 per cent.
>
> "Of course, this flat reduction of 25 per cent is not scientific, but is something that everyone can understand. Even the man who runs may read this provision and know exactly what it means. He knows that he is going to get one-fourth off of his taxes for this year. The application of it will be made in the first instance by a reduction of 25 per cent in each one of the payments to be made. * * *
>
> "It would be absolutely impossible (to give the taxpayers the new rates for their 1923 income) at this time when the bill cannot be passed until after a number of parties have already paid their taxes and already made up their returns; and to put in force the system which is provided in the bill would produce utter chaos. There is only one way of getting at it, and that is the way suggested in the bill, by making a simple, flat reduction all the way through."

Cong. Rec., Vol. 65, Part 3, p. 2427, 2432.

POINT IV

The government's contention that taxpayers with 1923-1924 fiscal year partnership income were deprived of the reduction but received a compensating equivalent by a reduction on their 1922 tax is untenable. The statute permits no such deduction.

The ruling sought by the government, that partners having fiscal year income, received in 1924 and partly attributable to 1923, are entitled to no reduction in their tax in respect to 1923, would leave such taxpayers in a class by themselves, apparently the only persons paying taxes on 1923 income to whom the law had for some unexplained reason failed to give the benefit of a tax reduction plainly intended for all. A discrimination of this kind would be an anomaly, altogether incongruous with the whole plan and purpose of an act reducing the tax burden.

But, says the government, such a partner was not left without relief. Although he was excluded from the benefit of the tax reduction granted to all other taxpayers who, like him, had paid, or been charged with, a tax on income attributable to 1923, he received as compensation a credit which no one else received; he was entitled to take a credit of 25% on his income attributable to 1922 to whatever extent that income had formed part of his partnership income for a fiscal year beginning in 1922 and ending in 1923. Indeed, the court below found in this supposed right something roughly compensatory for the discrimination against a partner which it considered the act of 1924 had wrought in respect to the 25% reduction. The court says:

> "Congress might well have thought that most partnerships were continuous during the periods covered by the remedial legislation relating to 1923 income, and that when a partner whose year for accounting ended in 1923, got a 25% deduction on earnings embracing firm income accruing in 1922, as well as down to the termination of the partnership fiscal year, in 1923, this was sufficient relief from the high tax rates prevailing in 1923."

It is submitted that the Act of 1924 reveals on the part of Congress no such rough-and-ready inexact attempt to make up for an unjust discrimination by conferring an unjust advantage. A complete answer is found in the fact that the act nowhere authorizes any such thing. No reduction was allowed by the Act of 1924 in the tax on 1922 income received as part of fiscal year income received in 1923 and reported in 1924.

That this is true is shown clearly by the provisions of Sec. 1201(a). This section provides carefully for allowing the 25% reduction only on the proportion of tax on fiscal year income which is attributable to the year 1923. Any reduction on tax on income of 1922 is denied by this section which limits the reduction to tax on 1923 income. Yet, in spite of the plain provisions of this section the opinion of the court below bases its argument on the incorrect assumption that the reduction is granted by the Act in the tax payable in 1924, on 1922 income, reported with income for 1923.

Sec. 1201(a) by expressly providing that when 1922 income is reported with 1923 income, the tax on 1923 income only shall be reduced provided in effect that no reduction should be allowed in the tax on 1922 income, wherever reported.

This clear statutory provision was disregarded by the Circuit Court of Appeals in its opinion which, in consequence, proceeded upon the incorrect assumption that the tax on 1922 income reported in 1923 returns, and consequently payable in 1924, was reduced 25% by the Act of 1924.

Even if the law permitted such an allowance, it would be of no benefit except to taxpayers whose partnerships were continuous for 1922 and 1923, a purely arbitrary classification. Such cases as *Rogers* v. *Anderson* and *Woody* v. *Bowers*, now pending in the courts below (Point I(a), *ad fin.*), in which the partnership began business in 1923, show that the supposed compensation in the form of special preferential treatment in respect to the tax on income of 1922, even could anything of the sort be found in the law, would be illuscry because wholly fortuitous in its application.

POINT V

To refuse the reduction in taxes on 1923 partnership income reported in 1924 returns would violate the Fifth Amendment to the Constitution of the United States.

This contention was passed over lightly by the Circuit Court of Appeals, the opinion stating, "there may be individual hardships and a firm which did not exist in 1922 and began business in 1923 would be unable to obtain any refund under the remedial provisions of the Act of 1924, but all

taxpayers similarly situated are treated alike". (R-28). This statement shows that the Court regarded individuals and firms as separate taxpayers. There never has been in any Revenue Act any income tax upon a firm. The only taxpayers are individual members of partnerships. All income tax acts have provided that partners are liable for income tax only in their individual capacity. It must follow that all taxpayers similarly situated are not treated alike if the Circuit Court of Appeals in these cases is correct. A taxpayer having 1923 income from one source would receive a reduction while another taxpayer having equally taxable income from another source would receive no reduction. In both cases the income is the same. It is the individual income of the taxpayer, in one case derived from a partnership and in another case derived from any other source but a partnership. Partnership income from tax exempt securities, from dividends, and from other sources is treated as the individual income of the partners from those sources. There is no distinction possible except that in one case the income is derived through a joint effort with others and in the other case the income is purely personal. This class does not constitute a small or inconsiderable number of taxpayers. It is well known that many partnerships commenced at dates other than January first. In fact, because this is usually the case and because partnerships usually have fiscal years differing from calendar years, provisions have been made in every income tax act for computing the taxes on partnership income where the partnership keeps accounting on a fiscal year basis. The Circuit Court of Appeals concedes that under its decision no member of a partnership beginning business after January 1, 1923, would

receive any reduction of 1923 income taxes on partnership income,—for example, if a partnership started business on February 1, 1923, and made large earnings during that year, no member of that firm would have any reduction in the taxes on that income, but would be obliged to pay full taxes computed under the 1921 Act; and these taxes would be computed at rates which were not the rates for 1923, but at rates for earlier years, the tax for 1923 being 25% less.*

Besides this class of partners who would receive no reduction whatever on partnership income earned in 1923, the discrimination would also affect all other partners having 1923 partnership income. As has been pointed out above (Point IV), the tax reduction did not affect 1922 income, as is clearly shown by the provisions of Section 1201(a) of the Revenue Act of 1924. Consequently, a taxpayer having any income from a firm which was in existence prior to January 1, 1923, is in no different position from that of a member of a firm which commenced business after January 1, 1923. He is not entitled to a reduction on 1922 income, and the decision below in these cases deprives him of any reduction in 1923 partnership income. The discrimination and hardship of this construction is apparent from the fact, easily computed from the record, that Mr. Stewart had no taxable personal non-partnership income for the year 1924, as his deductions exceeded his personal income, other than that derived from the firm of which he was a member, by more than $15,000, while Mr. Shearer's net income from per-

* We are advised that in *Rogers* v. *Anderson* and *Woody* v. *Bowers*, now pending in the District Court for the Southern District of New York, above referred to (Point I (a), *ad fin.*), the taxpayers' firm was formed in ~~1893~~ 1923.

sonal sources for 1924 was only $2,567.63, the partnership income in each case for the fiscal year beginning May 1, 1923, having amounted to over $100,000. A mere statement of the situation is sufficient to show the arbitrary nature of such a classification. Such an Act, although a seeming exercise of the taxing power, would be "so arbitrary as to constrain to the conclusion that it was not the exercise of taxation but a confiscation of property, that is, a taking of the same in violation of the Fifth Amendment, or, what is equivalent thereto, was so wanting in basis for classification as to produce such gross and patent inequality as to inevitably lead to the same conclusion."

Brushaber *v.* Union Pacific R. R., 240 U. S. 1, 24.
Barclay & Co. *v.* Edwards, 267 U. S. 442, 450.

The judgments of the Circuit Court of Appeals for the Second Circuit should be reversed.

Respectfully submitted,

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APPENDIX

STATUTES INVOLVED

Revenue Act of 1924

(Effective as of January 1, 1924)

FISCAL YEARS

Sec. 207. (a) If the taxpayer makes return for a period beginning in one calendar year (hereinafter in this subdivision called "first calendar year") and ending in the following calendar year (hereinafter in this sbduivision called "second calendar year") and the law applicable to the second calendar year is different from the law applicable to the first calendar year, then his tax under this title for the period ending during the second calendar year shall be the sum of: (1) the same proportion of a tax for the entire period, determined under the law applicable to the first calendar year and at the rates for such year, which the portion of such period falling within the first calendar year is of the entire period; and (2) the same proportion of a tax for the entire period, determined under the law applicable to the second calendar year and at the rates for such year, which the portion of such period falling within the second calendar year is of the entire period.

(b) If a fiscal year of a partnership begins in one calendar year and ends in another calendar year, and the law applicable to the second calendar year is different from the law applicable to the first calendar year, then (1) the rates for the calendar year during which such fiscal year begins shall apply to an amount of each partner's share of such partnership net income (determined under the law applicable to such calendar year) equal to the proportion which the part of such fiscal year falling within

such calendar year bears to the full fiscal year, and (2) the rates for the calendar year during which such fiscal year ends shall apply to an amount of each partner's share of such partnership net income (determined under the law applicable to such calendar year) equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year. In such cases the part of such income subject to the rates in effect for the most recent calendar year shall be added to the other income of the taxpayer subject to such rates and the resulting amount shall be placed in the lower brackets of the rate schedule applicable to such year, and the part of such income subject to the rates in effect for the next preceding calendar year shall be placed in the next higher brackets of the rate schedule applicable to such year.

PARTNERSHIPS

Sec. 218. (a) Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership ending within the taxable year upon the basis of which the partner's net income is computed.

PARTNERSHIP RETURNS

Sec. 224. Every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed by this title, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income

if distributed and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners.

TITLE XII.—REDUCTION OF INCOME TAX PAYABLE IN 1924

SEC. 1200. (a) Any taxpayer making return, for the calendar year 1923, of the taxes imposed by Parts I and II of Title II of the Revenue Act of 1921 shall be entitled to an allowance by credit or refund of 25 per centum of the amount shown as the tax upon his return.

SEC. 1201. (a) Any taxpayer making return, for a period beginning in 1922 and ending in 1923, of the taxes imposed by Parts I and II of Title II of the Revenue Act of 1921, shall be entitled to an allowance by credit or refund of 25 per centum of the same proportion of his tax for such period (determined under the law applicable to the calendar year 1923 and at the rates for such year) which the portion of such period falling within the calendar year 1923 is of the entire period.

(b) Any taxpayer making return, for a period beginning in 1923 and ending in 1924, of the taxes imposed by Parts I and II of Title II of this Act, shall be entitled to an allowance by credit or refund of 25 per centum of the same proportion of a tax for such period (determined under the law applicable to the calendar year 1923 and at the rates for such year) which the portion of such period falling within the calendar year 1923 is of the entire period.

(c) In the case of a deficiency assessed upon a taxpayer entitled to the benefits of subdivision (a) or (b) in respect of the tax for a period beginning in 1922 and ending in 1923 or beginning in 1923 and ending in 1924, the allowance provided for in subdivisions (a) and (b) shall be made in respect of such deficiency in a similar manner to that provided in subdivision (f) of section 1200.

Revenue Act of 1921

Sec. 205 (c). If a fiscal year of a partnership begins in 1920 and ends in 1921, or begins in 1921 and ends in 1922, then (1) the rates for the calendar year during which such fiscal year begins shall apply to an amount of each partner's share of such partnership net income (determined under the law applicable to such year) equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year, and (2) the rates for the calendar year during which such fiscal year ends shall apply to an amount of each partner's share of such partnership net income (determined under the law applicable to such calendar year) equal to the proportion which the part of such fiscal year falling within such calendar year bears to the full fiscal year.

[Repealed by Act of 1924]

Revenue Act of 1918

Sec. 206. That whenever parts of a taxpayer's income are subject to rates for different calendar years, the part subject to the rates for the most recent calendar year shall be placed in the lower brackets of the rate schedule provided in this title, the part subject to the rates for the next preceding calendar year shall be placed in the next higher brackets of the rate schedule applicable to that year, and so on until the entire net income has been accounted for. In determining the income, any deductions, exemptions or credits of a kind not plainly and properly chargeable against the income taxable at rates for a preceding year shall first be applied against the income subject to rates for the most recent calendar year; but any balance thereof shall be applied against the income subject to the rates of the next preceding year or years until fully allowed.

[Repealed by Act of 1921]